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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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PRIEST & GOLDSTEIN PLLC 5015 SOUTHPARK DRIVE SUITE 230 DURHAM, NC 27713-7736			BORLINGHAUS, JASON M	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/909,439	SELLERS ET AL.	
	Examiner	Art Unit	
	Jason M. Borlinghaus	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1-3, 5, 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dhar (US PG Pub. 2002/0040339 A1) in view of Disclosed Prior Art (see specification, p. 1, line 14 – p. 2, line 6) and Myers (TA Myers & Co. *Real Estate Problem Loans: Workout Strategies and Procedures*. Dow Jones-Irwin. 1990. pp. 5 – 30).

Regarding Claim 1, Dhar discloses a system comprising:

- a network of personal computers (clients) connected into a network administered by a central server computer (web server). ("The web server is in network communication with the Internet. The web server provides the Internet interface for the client's web browser. Specifically, the web

server hosts dynamic web pages and provides an interface for clients to interact with the application server and the database server.” - see p. 1, para. 17);

- each personal computer in the network including a network interface (web interface) for transmitting servicer (client) inputs to, and receiving outputs from, the server computer. (“Each request from the client proceeds through the web server, which transmits the required information to the application server.” – see p. 1, para. 18. “Assuming that the borrower scores high enough to qualify for one or more of the instant offer loans, the system compiles a list of instant offers for that consumer and displays them on a web page for the consumer's review.” – see p. 9, para. 104);
- each personal computer in the network further including display screens for receiving inputs from, and providing outputs to, a servicer (client), including inputs and outputs relating to a proposed loan. (“...a website interface providing a credit application form for a consumer to complete, the website interface providing a field for the consumer to select a category of loan offerings..” – see Claim 1. A display screen would be inherent in collecting input through a website interface. “Assuming that the borrower scores high enough to qualify for one or more of the instant offer loans, the system compiles a list of instant offers for that consumer and displays' them on a web page for the consumer's review.” – see p. 9, para. 104);

- the central server computer (application server) having a central processing unit (workflow/decision engine) that runs automatic loan decision analysis software and has access to electronically stored information relating to the borrower and other information necessary for analysis of a decision (credit information dataset) for approval, deferral or rejection of the proposed loan (see instant offer, further review, and no offer – see figure 3). (“When the lending institution receives the application data, the back-end loan workflow engine is activated instantly to perform automatic decision analysis for credit scoring, ratio analysis and other credit checks to meet the selection criteria of each financial institution.” – see p. 4, para. 41. “The workflow engine accepts web-based loan applications, processes the loan applications programmatically, and renders a loan decision within seconds.” – see abstract. “...renders an programmatic loan decision without human intervention...” – see abstract – establishing that the decision is automatic. “In the United States, credit bureaus, such as TRANSUNION, EQUIFAX and the like, maintain credit information relating to each consumer according to his or her social security number. Creditors can access credit information relating to credit applicants by accessing secure databases of these credit bureaus.” – see p. 8, para. 86 – 88);
- the central server computer (application server) being operative, under the control of the workout analysis software (workflow/decision engine), to

analyze details of the proposed loan in light of criteria (checklist) established by the lender, the analysis taking into account concessions that must be made in order to secure the proposed loan. ("Offer details maybe renegotiated online by clicking a link to communicate directly with the financial institution." – see p. 12, para 141 – It is inherent in renegotiation that concessions are made to secure the goal); and

- the central server computer transmitting to the borrower, automatically over the network, automatic approval of the proposed loan if the proposed loan meets the criteria (checklist) established by the lender and, if the proposed loan does not meet the criteria established by the lender, providing further instructions to the borrower (rejection notice). ("The workflow engine uses checklists to evaluate loan applications." – see abstract. "If the bank rejects the application, a rejection notice is sent to the applicant." – see p. 9, para. 0100. "...renders an programmatic loan decision without human intervention..." – see abstract – establishing that the decision is automatic).

Dhar does not teach a system comprising:

- inputs from and outputs to, a servicer on behalf of a financially troubled borrower, including inputs and outputs relating to a proposed loan workout to resolve a problem status of an existing loan obligation of the financially troubled borrower;

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- the central server computer having a central processing unit that runs automatic workout approval analysis software and has access to electronically stored information related to the financially troubled borrower and existing loan information necessary for analysis of a decision for approval, deferral or rejection of the proposed workout; and
- the central server computer being operative, under the control of the workout analysis software, to analyze details of the proposed workout in light of criteria established by a mortgage insurer, the analysis taking into account concessions that must be made in order to accomplish the proposed workout, the analysis further taking into account financial conditions related to the borrower and the property influencing the desirability of making concessions necessary to accomplish the proposed workout and the likelihood of success of resolving the problem status of the loan through the proposed workout.

Disclosed Prior Art discloses:

- inputs from and outputs to, a servicer (workout representative) on behalf of a financially troubled borrower, including inputs (borrower completed workout proposal) and outputs (requesting of more borrower information) relating to a proposed loan workout to resolve a problem status of an existing loan obligation of the financially troubled borrower. (see p. 1, lines 20 – 25).

Myers discloses a system comprising:

- workout analysis has access to information related to the financially troubled borrower (evaluation of borrower) and existing loan information (pertinent information). (see pp. 15 – 20); and
- the analysis taking into account concessions that must be made in order to accomplish the proposed workout, the analysis further taking into account financial conditions related to the borrower and the property influencing the desirability of making concessions necessary to accomplish the proposed workout and the likelihood of success of resolving the problem status of the loan through the proposed workout. (see p. 19 – 30)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dhar by incorporating the established loan workout analysis, as disclosed by Disclosed Prior Art and Myers, into the automated loan decision analysis software and workflow/decision engine, as disclosed by Dhar, to provide a faster and automated system through which to run loan workouts, and, as disclosed by Dhar, produce an automatic decision.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dhar and Disclosed Prior Art by incorporating the ability to make concessions to increase the likelihood of success of securing the proposed workout, as disclosed by Myer, to increase the number of tasks that the automated workout system can manage without human interaction, such as through Dhar's usage of "different combinations of parameters" (see Dhar, p. 9, para. 98).

Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated these processes, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

Regarding Claim 2, Dhar discloses a system, wherein the personal computers are connected into the network using an Internet connection. ("The web server is in network communication with the Internet. The web server provides the Internet interface for the client's web browser. Specifically, the web server hosts dynamic web pages and provides an interface for clients to interact with the application server and the database server." - see p. 1, para. 0017).

Regarding Claim 3, Dhar discloses a system, wherein the network interface is web-based. ("The web server is in network communication with the Internet. The web server provides the Internet interface for the client's web browser. Specifically, the web server hosts dynamic web pages and provides an interface for clients to interact with the application server and the database server." - see p. 1, para. 0017).

Regarding Claim 5, Dhar discloses a system, wherein if the user inputs fail to satisfy predetermined guidelines (checklists), the user receives a message informing the user that the system cannot be used. ("Rejection notice sent to applicant" – see figure 7, 114, 116, 118 and 120).

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Regarding Claims 6 – 8 and 10, further method claims would have been obvious from system claims rejected above, Claims 1 – 3 and 5, respectively, and are therefore rejected using the same art and rationale.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dhar, Disclosed Prior Art and Myers, as in Claim 1 and 6 above, in further view of Fletcher (US Patent 6,112,190).

Regarding Claim 4, neither Dhar, Disclosed Prior Art nor Myer teach a system, wherein:

- one or more of the display screens presents to a user a menu of predefined workout types and wherein the system allows the user to choose a workout type by making an appropriate selection from the menu of predefined workout types.

Fletcher discloses a system wherein:

- one or more of the display screens presents to a menu (drop-down menu) of predefined analysis types and wherein the system allows the user to choose an analysis type by making an appropriate selection from the menu (drop-down menu) of predefined analysis types. (see figure 14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the automated loss mitigation loan workout system, as disclosed by Dhar, Disclosed Prior Art and Myer, in combination, to provide a menu of predefined analysis types for selection among, as disclosed by Fletcher, to

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utilize a common and standard software feature to create an easier to utilize graphic user interface.

Regarding Claim 9, further method claim would have been obvious from system claim rejected above, Claim 4, and is therefore rejected using the same art and rationale.

Response to Arguments

Applicant's arguments filed 3/6/06 have been fully considered but they are not persuasive.

In response to applicant's argument concerning the §103 rejection of Claims 1-3, 5, 6-8 and 10, specifically applicant's argument that Dhar in view of Myers and Disclosed Prior Art, neither separate nor in combination, disclose nor suggest each claim limitation, the examiner respectfully disagrees.

As a preliminary matter, examiner asserts "one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller, Terry, and Davies*, 208 USPQ 871, 882 (CCPA 1981). Additionally, examiner asserts, as a preliminary matter, that, as established by *In re Venner*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have automated the method, since it has been held that broadly providing a mechanical or automatic means to replace manual activity that accomplishes the same result involves only routine skill in the art.

With those points in mind, Dhar is the automation of the formerly manual loan processing methodology. (see Dhar, p. 1, para. 2 – 3). Dhar possesses the same structure as the applicant – networked computers administered by a central server computer; receiving inputs to, and receiving outputs from, a central server computer; each networked computer possessing display screens for inputs and outputs. (supra). But most importantly, Dhar has a central server computer that runs automatic loan decision analysis software that processes the borrower's input and automatically ("without human intervention") renders a loan decision. (see Dhar, abstract).

While Dhar discloses an automated loan processing system that considers "credit scoring, ratio analysis and other credit checks to meet the selection criteria of each financial institution" (see Dhar, p. 4, para. 41), Myers and Disclosed Prior Art discusses the manual loan workout processing methodology that considers "workout guidelines" (see Disclosed Prior Art, p. 1, line 20 – p. 2, line 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dhar by incorporating the established loan workout analysis, as disclosed by Myers and Disclosed Prior Art, into the automated loan decision analysis software and workflow (decision) engine, as disclosed by Dhar, to provide a faster and automated system through which to run loan workouts, and, as disclosed by Dhar, produce an automatic decision.

Additionally, applicant argues that Dhar, which is directed to approval of new loans, neither teaches nor suggests "access to existing loan related information necessary for analysis of a decision of a proposed workout." However, Myers states that

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“when early warning signs indicate a potential loan problem exists, the asset manager should immediately begin gathering pertinent information” (see Myers, p. 15) and “The information-gathering process should be geared towards providing data that will result in the selection of an action plan that is most appropriate for the particular distressed situation.” (see Myers, p. 15). Such information is gathered due to a pre-existing loan whose terms are not being met by the financially troubled borrower (“loan default”) (see Myers, p. 18) and, therefore, such pertinent information gathered in the information gathering process, as disclosed by Myers, would include information relating to the pre-existing loan and other information relating to why the troubled borrower is financially troubled.

Applicant argues that Dhar “would typically simply reject an application for a new loan submitted by a financially distressed borrower or would restrict the offers presented to those appropriate for a high risk borrower,” a situation not available under the claimed invention as “the loan obligation has already been entered into and the funds advanced.” Applicant’s argument fails to consider prior art references in combination. Dhar discloses processing its loan application through utilization of “checklists created by the workflow designer” (see abstract). Myers and Disclosed Prior Art disclose processing loan workout through consideration of various factors, such as “workout guidelines” (see Disclosed Prior Art, p. 1, line 20 – p. 2, line 4). In light of modification of Dhar’s automated processing of loan applications by incorporation of the loan workout analysis, as disclosed by Myers and Disclosed Prior Art, and the fact that loan workouts are applicable to “financially distressed borrower[s]”, as disclosed by Myers and

Disclosed Prior Art, the composite system would need to allow interaction with such individuals.

Applicant's argument cites "The Response to Arguments section of the Official Action at p.8" in his reply. Examiner assumes that applicant is referring to p. 8 of the §103 Rejection section of the previous Office Action, as there was no Response to Arguments in the previous Office Action.

In response to applicant's argument that there is no suggestion to combine the references, the Courts have stated that "[a] suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references...The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art... However, rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 78 USPQ2d 1329, 1336 (CA FC 2006).

Examiner asserts that he can and/or has provided such "articulated reasoning" to support the legal conclusion of obviousness. Examiner asserts that ample motivation exists by virtue of automation and in light of *In re Venner* to extend the "initial loan system to handle complex tasks of analyzing" loan workouts.

In response to applicant's argument that the proposed prior art combination is improper as prior art references are non-combinable, examiner asserts "the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." *In re Keller, Terry, and Davies*, 208 USPQ 871, 881 (CCPA 1981). While neither prior art reference discloses how the prior art references may be combined, the teachings of the references suggest the combination. In the instant case, the combination of an automated loan approval system, as disclosed by Dhar, with a loan workout approval methodology, as disclosed by Disclosed Prior Art and Myers.

In response to applicant's argument concerning In re Venner, specifically that the applicant's argument that In re Venner was inappropriately applied to establish the obviousness of automation of a known process, the examiner respectfully disagrees.

Examiner asserts, "if a new combination of old elements is to be patentable, the elements must cooperate in such manner as to produce a new, unobvious, and unexpected result. It must amount to an invention...In the absence of invention, utility and novelty are not sufficient to support the allowance of claims for a patent... Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or

automatic means to replace manual activity which has accomplished the same result.”

In re Venner and Bowser, 120 USPQ 192, 194 (CCPA 1958).

In the instant case, the applicant is claiming a combination of old elements, a known manual process, conducting work loan workouts, and a known device, a computer system. Applicant is not claiming a new element, such as a specific feature or structure, that makes the very invention possible nor is the applicant combining old elements to “produce a new, unobvious, and unexpected result.” Therefore, it would have been obvious, as with *In re Venner*, to automate a known process, as enumerated above, with a computer system.

Regardless of *In re Venner*, prior art reference(s) utilized in the previous rejection already disclose or suggest automation of the known manual process.

In response to applicant’s argument concerning Claim 6, specifically applicant’s argument that Dhar in view of Myers and Litton, neither separate nor in combination teach nor suggest, cited claim language, examiner respectfully disagrees.

Dhar discloses a proposed loan approval in light of criteria (“criteria”) established by mortgage insurer (“lenders”), the analysis further taking into account financial conditions related to the borrower. (see abstract).

Myers discloses a proposed workout in light of criteria established by a mortgage insurer (“asset management personnel”), the analysis taking into account concessions that must be made in order to accomplish the proposed workout (“[t]he legal consequences associated with any action to grant concessions to the borrower or to seek removal of the borrower must be considered by the asset manager as part of the

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evaluation”), the analysis further taking into account financial conditions related to the borrower (“Information relating to the evaluation of the borrower”) and the property (“asset/collateral description” and “valuation of asset”) influencing the desirability of making the concessions necessary to accomplish the proposed workout and the likelihood of success of resolving the problem status of the loan through the proposed workout (“The purpose of the information-gathering process is to provide the lender with a clear indication as to which of the preceding alternatives should be selected and the potential consequences associated with the implementation of that alternative.”) (see pp. 15 – 27) .

Disclosed Prior Art discloses a proposed workout in light of criteria (“workout guidelines”) established by a mortgage insurer (“lending institution”), the analysis taking into account concessions that must be made in order to accomplish the proposed workout (such as “deeding the real estate secured by the mortgage to the lender”).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Dhar’s automated loan approval system by incorporating loan workout approvals, and the underlying analysis and information sources utilized for such approvals, as disclosed by Myers and Disclosed Prior Art, allowing for automation of a formerly manual process.

Conclusion

Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (571) 272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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